

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application for:

Art Unit: 3743

ACHENBACH, PATRICK

Docket Number: 6097P061

Serial No.: 10/529,123

Examiner: GRAVINI, STEPHEN M.

Filed: October 13, 2005

Confirmation No. 1493

For: DEHUMIDIFYING OF AIR WITHIN SWITCH CABINET FOR A
WIND TURBINE BY MEANS OF PELTIER ELEMENT

APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
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Applicant (hereinafter “Appellant” submits one copy of the following Appeal Brief pursuant to 37 C.F.R. § 41.37 for consideration by the Board of Patent Appeals and Interferences. Appellant also submits herewith payment in the amount of \$540.00 to cover the cost of filing the opening brief as required by 37 C.F.R. § 41.20(b)(2). Please charge any addition amount due or credit any overpayment to deposit Account No. 070849.

Respectfully submitted,

September 8, 2009

Date

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(I) STATEMENT OF REAL PARTY OF INTEREST

The real party in interest is the assignee of full interest in the invention as claimed, General Electric Company, a corporation, having a principal address at 3135 Easton Turnpike, Fairfield, CT 06828-001, United States.

(II) STATEMENT OF RELATED CASES

A proceeding of opposition before the European Patent Office is provided on European Patent 11123E-EP granted to the Plaintiff. Oral arguments will be heard regarding opposition to the granted European Patent by three opponents. While the subject matter is the same, the claims of the European Patent are considered by the Plaintiff in the instant U.S.P.T.O. Appeal to be substantially different from the claims before the Appeals Board to be non-instructive to a decision in the instant case. The summons to attend oral proceedings pursuant to Rule 115(a) EPC is included in the Appendix Section 10.

(III) JURISDICTIONAL STATEMENT

The Board has jurisdiction under 35 U.S.C. 134(a). The Examiner mailed a final rejection on Jan. 7, 2009 (*FOA Jan 7, 2009*) setting a three-month shortened statutory period for response. The time for responding to the final rejection expired on July 7, 2009 Rule 134. A notice of appeal and a request for a three-month extension of time under Rule 136(a) was filed on July 7, 2009. The time for filing an appeal brief is two months after the filing of a notice of appeal. Rule 41.37(c). The time for filing an appeal brief expires on September 7, 2009, extended to September 8, 2009 as the expiration date falls on Labor Day, a holiday in the District of Columbia. The appeal brief is being filed on September 8, 2009

(IV) TABLE OF CONTENTS

SECTION	PAGE
(1) Statement of real party of interest	3
(2) Statement of related cases	3
(3) Jurisdictional statement	4
(4) Table of contents	5
(5) Table of authorities	6
(6) Status of amendments	6
(7) Grounds of rejections to be reviewed	7
(8) Statement of facts	8
(9) Argument	19
A. Rejection of Claim 13	19
B. Rejection of Claim 14	24
C. Rejection of Claim 15	25
D. Rejection of Claim 16	26
E. Rejection of Claim 17	27
F. Rejection of Claim 18	29
G. Rejection of Claim 19	30
H. Rejection of Claim 20	30
I. Rejection of Claim 21	31
J. Rejection of Claim 22	31
K. Rejection of Claim 23	32
L. Rejection of Claim 24	33
M. Rejection of Claim 25	34
N. Rejection of Claim 26	35
O. Rejection of Claim 27	35
P. Rejection of Claim 28	35
(10) Appendix	36
A. Claims	36
B. Claim Support and Drawing Analysis	40
C. Means or Step Plus Function Analysis	45

D. Evidence	45
E. Related Cases	45
111123E-EP Application No. 03750628.4-2315/1546553 (5 Pages)	
Summons to attend oral proceedings pursuant to Rule 115(1) EPC	

(V) TABLE OF AUTHORITIES

35 U.S.C. § 103(a).....	6, 7, 19,20, 22,24,25, 26,27, 29, 30, 31, 32, 35
35 U.S.C. § 102(b).....	6, 7, 33, 34, 35
35 U.S.C. § 41.37.....	1, 4, 6
<i>Manual of Patent Examining Procedure (MPEP)</i> , Section 2111, 2141, 2142, 8 th	
Ed., August 2001, Latest Revision July 2008..... 6, 19 ,20, 30	
<i>KSR Int’l v. Teleflex Inc.</i> , 127 Ct. 1727, 1741 (2007) 6, 30	

(VI) STATUS OF AMENDMENTS

No amendment was filed after final rejection. A copy of Claims 13-28 as they stand on appeal are set forth in Appendix A.

(VII) GROUNDS OF REJECTION TO BE REVIEWED

1. Claims 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamerski (U.S. 3,589,025) “*Hamerski*” in view of Seabury (U.S. 4,745,868) “*Seabury*”.
2. Claim 17 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Hamerski* in view *Seabury* and in view of Roethel (U.S. 1,722,825) “*Roethel*”.
3. Claims 18-20 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Hamerski* in view of *Seabury*.
4. Claims 21-22 are are rejected under 35 U.S.C. §103(a) as being unpatentable over *Hamerski* in view of *Seabury* in view of Streed (US 3,332,620).
5. Claims 23-25 are rejected under 35 U.S.C. §102(b) as being anticipated by Schloss (U.S. 4,044,772) “*Schloss*”.
- 6 Claims 26-27 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Schloss* in view of *Seabury*.
7. Claim 28 is rejected under 35 U.S.C. §102(b) as being anticipated by *Schloss*.

All of the claims do not stand or fall together. The basis for the separate patentability of claims is set forth below.

(VIII) STATEMENT OF FACTS

1. Page 1 lines 15-18 define the subject matter of the present invention “operating parameters of modern wind turbines, like e.g. blade angle, total orientation of the rotor and/or adjustment of the generator used for power generation, are electronically controlled.” (Application: 10/529123), Pg. 1, lines 15-19)
2. Moisture on electronically controlled circuit elements will interfere with or fault normal operation of critical operating parameters of power generating wind turbines. (Application: 10/529123), Pg. 1, lines 19-21)
3. *Hamerski* discloses an all weather gas supply unit for delivering generally inert gas to a sealed storage structure for atmosphere control (*Hamerski* Abstract lines 1-3).
4. In rejecting Claims 13-16, the Examiner cites *Hamerski* as disclosing a “power generating wind turbine switch cabinet” 9, FIGs. 1, 3. (FOA mailed Jan. 7, 2009, Page 2, 2nd par.)
5. Item 9 of *Hamerski* is referred to as an “exothermic gas generator” (Col. 3, lines 15-16); “a gas supply unit” (Col. 3, lines 49-5); and “generator” (Col. 5, line 30). (*Hamerski*)
6. “Gas burners or generators will provide a gas with a high percentage of CO₂

and N₂ and a low percentage of CO and a near zero percentage of O₂” (*Hamerski* Col. 1, lines 31-35).

7. The exothermic gas generator 9 of *Hamerski* delivers the gas for environmental control in an external silo 1 (FIG. 1), not for control within a switch cabinet. (*Hamerski*)

8. In rejecting Claims 13-16, the Examiner cites *Hamerski* as disclosing “at least one wind turbine 69 circuit element coupled to the power generating wind turbine switch cabinet” 9 in FIG 3. (FOA mailed Jan. 7, 2009, Page 2, 2nd par.)

9. Item 69 of *Hamerski* is referred to as a “blower” (*Hamerski* Col 5, lines 47, 49, 51, 56, 67).

10. Blower 69 causes ambient air to flow through shroud 21 and around condenser 18 and combustion chamber 16 (*Hamerski* Col. 5, lines 56-59).

11. A blower is not a wind turbine.

12. In rejecting Claims 13-16, the Examiner cites *Hamerski* as disclosing drying arrangement adapted to prevent water deposition onto the at least one power generating wind turbine circuit element, the drying arrangement including an air flow device generating an air flow in a region of the at least one power generating wind turbine circuit element (col. 4 lines 44-66). (FOA mailed Jan. 7, 2009)

13. Col. 4 lines 44-66 of *Hamerski* recites a water trap and separator assembly but not a drying arrangement including an air flow generating device, an air flow in

a region of the at least one power generating-wind turbine circuit element to counteract the water deposition onto the at least one power generating wind turbine circuit element. (*Hamerski*)

14. Generating an airflow in a region of the power generating wind turbine circuit element absorbs moisture as a result of air passing over the circuit element. (Application: 10/529123 Pg. 2 lines 13-99; Pg.3 lines 11-18)

15. In rejecting Claims 13-16, the Examiner acknowledges that *Hamerski* does not disclose the claimed power generating wind turbine circuit element. (FOA mailed Jan. 7, 2009 Pg. 2, Par. 2)

16. In rejecting Claims 13-16, the Examiner cites *Seabury* as another drying arrangement disclosing the claimed power generating wind turbine circuit element “on the face of the reference”. (FOA mailed Jan. 7, 2009, Pg. 2, Par. 2)

17. In rejecting Claims 16-19, the Examiner asserts that it would have been obvious to one skilled in the art to combine the teachings of *Hamerski* with the power generating wind turbine circuit element of *Seabury* for the purpose of providing an optimum source of energy in an efficient drying process. (FOA mailed Jan. 7, 2009, Pg. 2 Par. 2- Pg. 3 Par. 1)

18. *Seabury* recites a system for and method of producing a beneficiated fuel from a raw low ranked moisture laden fuel. (*Seabury Abstract*)

19. The face page of *Seabury* illustrates a moisture reduction apparatus block 20

that accepts an exhaust gas from a combustion turbine 12 that generates electricity 40 and delivers a beneficiated fuel 26 with moisture removed to a fired steam generator 44. (*Seabury*)

20. The moisture reduction process for the fuel in *Seabury* directs hot exhaust gas from the combustion gas turbine to be run over an organic fuel to remove moisture *Seabury* (Col. 1 lines 28-38).

21. The Examiner never recites what on the face page of *Seabury* constitutes a power generating wind turbine circuit element. (FOA mailed Jan. 7, 2009)

22. A combustion gas turbine is not a power generating wind turbine nor even a wind turbine as recited in claim 13.

23. Nowhere in *Seabury* is a power generating wind turbine illustrated or recited. (*Seabury*)

24. No power generating wind turbine circuit element, nor any electric circuit element, is illustrated on the face page of *Seabury*. (*Seabury*)

25. In rejecting Claim 14, the Examiner cites *Hamerski* as disclosing the claimed at least one heating device to heat an air in the region of the at least one power generating wind turbine circuit element. (FOA mailed Jan. 7, 2009, Pg. 2, Par. 2)

26. Heating air in the region of the power generating wind turbine circuit element enhances moisture absorption in the air passing by. (Application:

10/529123), Pg. 1, lines 22-29))

27. The Examiner does not recite any specific part number of FIG. 3 of *Hamerski* that discloses the structural relationship of “at least one heating device to heat an air in the region of the at least one power generating wind turbine circuit element”. (*Hamersk*)

28. Heaters 58 and 73 of *Hamersk* heat air to prevent freezing and flow blockage of airflow in an outdoor silo system [FIG. 3; Col. 5, lines 5-8; Col. 5, lines 68-72] but cite no relationship to a power generating wind turbine circuit element. (*Hamersk*)

29. In rejecting Claim 15, the Examiner cites *Hamersk* as disclosing cooling and drain elements (col 4 line 62-col. 5 line 4). (FOA mailed Jan. 7, 2009, Pg. 2, 2nd Par.)

30. The cooling arrangement (ice arrestor) 10 of *Hamerski* cited by the Examiner (Col. 4 line 62-col.5 line 4) is located outside the structure of the exothermic gas generator 9 cited by the Examiner as a power generating wind turbine switch cabinet and therefore is unable to cool the air in the switch cabinet 9(as referred to by the Examiner) for moisture removal. (FOA mailed Jan. 7, 2009, Pg. 2, 2nd Par.)

31. In rejecting Claims 13-15, the Examiner cites *Hamerski* as not disclosing the cooling element being spaced apart from the at least one power generating wind

turbine circuit element. (FOA mailed Jan. 7, 2009, Pg. 2, 2nd Par.)

32. In rejecting Claim 16, the Examiner cites Col. 5, lines 31-36 of *Hamerski* as reciting “moving air past the cooling element” which is cooling air shroud 21.

(FOA mailed Jan. 7, 2009, Pg. 2, 2nd Par.)

33. In rejecting Claim 17, the Examiner recites *Hamerski* in view of *Seabury* in view of *Roethel*. (FOA mailed Jan. 7, 2009, Pg. 4, 1st Par.)

34. In rejecting Claim 17, the Examiner acknowledges that *Hamerski* in view of *Seabury* does not disclose the claimed cooling element to separate water from air flow by, the cooling element being spaced apart from the at least one circuit element, and a drain element to drain the water deposition out of the switch cabinet and the air flow generating device to circulate air with the switch cabinet and to move air past the at least one circuit element and the cooling element. (FOA mailed Jan. 7, 2009, Pg. 4, 1st Par.)

35. In rejecting Claim 17, The Examiner asserts that *Roethel* is an air flow apparatus disclosing a cooling element 28 to separate water from air flowing by, the cooling element being spaced apart from the at least one circuit element and a drain element to drain the water deposition out of the switch cabinet (Page 2 line 15) and the air generating device to circulate air within the switch cabinet and to move air past the at least one circuit element and the cooling element (Page 2 line 15). (FOA mailed Jan. 7, 2009, Pg. 4, 1st Par.)

36. The Examiner asserts that it would have been obvious to one skilled in the art provide the teachings of *Hamerski* in view of *Seabury* with the cooling element (of *Roethel*) to separate water from air flowing by, the cooling element being spaced apart from the at least one circuit element; and a drain element to drain the water deposition out of the switch cabinet and the air and the air flowing device to circulate air within the switch cabinet and to move air past the at least one circuit element and the cooling element for the purpose of efficient moisture free operation of electrical and mechanical equipment in a switching environment. (FOA mailed Jan. 7, 2009, Pg. 4, 1st Par.)

37. *Roethel* is a patent issued July 30, 1929 for a roof ventilator of a closed automobile body (*Roethel*-Title). describing a structure for ventilating the inside of an automobile with a fan while preventing outside rain and snow from entering (*Roethel* Col 1 lines 6-20).

38. The examiner asserts that *Roethel* discloses a cooling element 28 separate water from air flowing by, the cooling element being spaced apart from the at least one circuit element. (FOA mailed Jan. 7, 2009, Pg. 2, 2nd Par.)

39. The cooling element 28 (FIG. 1, FIG. 6, Page 2, line 53) of *Roethel* cited by the Examiner is a fan that creates the airflow, not a cooling element being spaced apart from the at least one circuit element to condense moisture in the ambient. The fan 28 exhausts moist air in the vehicle to the outside. (*Roethel*)

40. In rejecting Claims 18-20, the Examiner asserts that *Hamerski* in view of *Seabury* discloses the claimed invention except for the claimed Peltier element for which it would have been an obvious design choice to one skilled in the art. (FOA mailed Jan. 7, 2009, Pg. 5, 1st Par.)

41. In rejecting Claims 18-20, the Examiner fails to recite why the Peltier element would have been an obvious design choice for one skilled in the art. (FOA mailed Jan. 7, 2009, Pg. 5, 1st Par.)

42. In rejecting Claims 19-20, the Examiner fails to recite any reference disclosing “a plate-like flow guidance element interspersed with the Peltier element such that the at least one power generating wind turbine circuit element is disposed at a side of the flow guidance element to face a warmer part of the Peltier element.” (FOA mailed Jan. 7, 2009, Pg. 5, 1st Par.)

43. In rejecting Claim 21-22, the Examiner asserts that *Hamerski* in view of *Seabury* discloses the claimed invention except for the claimed humidity control device in which *Streed* discloses (col. Line 3-Col. 4 line 66).

44. *Streed* recites a humidity control device, which is responsive to temperature outside of a building such that the relative humidity within the building may be controlled in a manner to prevent condensation formation on the exterior surfaces of the building. (*Streed*)

45. Claim 21 recites humidity control for deposition on a power generating wind

turbine circuit element within a power generating wind turbine switch cabinet.

46. Claim 22 recites the power generating wind turbine circuit element control an operational parameter of the wind turbine.

47. *Schloss* recites an environmentally controlled chamber for cardiovascular conditioning of a subject individual, specifically “An apparatus for cardiovascular conditioning, alternative bodily waste eliminations and other physiological purposes includes a chamber in which a person is subjected to an environmental temperature elevated sufficiently to cause profuse sweating and increased heart rate.” (*Schloss*- Abstract)

48. In rejecting Claims 23-25 and 28, the Examiner asserts that *Schloss* discloses controlling an operational parameter of a wind turbine by at least one power generating wind turbine circuit element coupled to a power generating wind turbine switch cabinet (Col. 7 line 52 through Col. 8 line 10). ((FOA mailed Jan. 7, 2009, Pg. 3, 1st Par.))

49. The Examiner acknowledges that *Schloss* fails to disclose the claimed power generation wind turbine circuit element”. (FOA mailed Jan. 7, 2009, Pg. 3, 1st Par.)

50. Col. 7 line 52 through Col. 8 line 10 discloses a fan circuit for a fan that circulates air in the environmental chamber. (*Schloss*)

51. In rejecting Claims 23-25 and 28, the Examiner asserts that *Schloss* discloses generating an airflow in the internal space of the power generating wind turbine

switch cabinet using an air flow generating device to counteract a deposition of condensation water onto the at least on power generating wind turbine circuit element (Col. 10. lines 1-60). (FOA mailed Jan. 7, 2009, Pg. 3, 1st Par.)

52. (Col. 10. lines 1-60) of *Schloss* recite a method of collecting sweat from a subject individual that supplies heated low-humidity air to the chamber with the subject individual and then cools the air to collect the perspiration. (*Schloss*)

53. In rejecting Claims 23-25 and 28, the Examiner asserts that *Schloss* discloses heating an air in a region of the at least one power generating wind turbine circuit element (Col. 8 lines 37-46). (FOA mailed Jan. 7, 2009, Pg. 3, 1st Par.)

54. Col. 8 lines 37-46 of *Schloss* recite heating air in the sweat chamber to cause a subject individual to sweat, thereby creating moisture, not heating air in the region of the power generating wind turbine circuit element. (*Schloss*)

55. In rejecting Claims 23-25 and 28, the Examiner asserts that *Schloss* discloses separating water from the airflow at a cooling element, the cooling element spaced apart from the at least one circuit element and draining the condensation water out of the switch cabinet by a drain element at (Col. 7, lines 27-40). (FOA mailed Jan. 7, 2009, Pg. 3, 1st Par.)

56. Col.7 lines 27-40 of *Schloss* does not recite the cooling element spaced apart from the at least one circuit element. (*Schloss*)

57. In rejecting Claims 23-25 and 28, the Examiner asserts that *Schloss* discloses

generating the airflow, heating the air, and activating the cooling element depending on temperature or humidity within or outside the switch cabinet (Col 6, lines 65-68). (FOA mailed Jan. 7, 2009, Pg. 3, 1st Par.)

58. In rejecting Claims 23-25 and 28, the Examiner acknowledges that *Schloss* fails to disclose the power generation wind turbine circuit element. (FOA mailed Jan. 7, 2009, Pg. 3, 1st Par.)

59. In rejecting Claims 23-25 and 28, the Examiner asserts that it would have been obvious to combine the teachings of Seabury as to the power generating wind turbine circuit element with *Schloss*.

60. In rejecting Claims 26-27, the Examiner asserts that *Schloss* discloses discloses the claimed invention except for a peltier element which would have been obvious to include to one skilled in the art. (FOA mailed Jan. 7, 2009, Pg. 5, 5th Par.)

61. In rejecting Claims 26-27, the Examiner fails to recite why the Peltier element would have been an obvious design choice for one skilled in the art. (FOA mailed Jan. 7, 2009, Pg. 5, 5th Par.)

(IX) ARGUMENT

In the FOA, the Examiner rejects claims 13-15 under 35 U.S.C. § 103(a) as being unpatentable over *Hamerski* in view of *Seabury*. Appellant respectfully submits for at least the following reasons claims 13-22 are patentable over the combination of cited references.

Words of the Claim Should Be Given Plain Meaning

In the FOA, the Examiner rejects claim 13 under 35 U.S.C. § 103(a) as being unpatentable over *Hamerski* in view of *Seabury*. To reach a proper determination under 35 U.S.C. § 103(a), the Examiner must make a determination whether the claimed invention as a whole would have been obvious at that time of the invention to one of ordinary skill in the art. Knowledge of the applicant's disclosure must be put aside in reaching this determination and impermissible hindsight must be avoided and the leagal conclusion must be reached on the basis of facts gleaned from the prior art

MPEP, Section 2142.

Appellant respectfully submits that the Examiner's interpretation for this limitation is improper for the following reasons. Appellant recognizes that the Examiner is entitled to the broadest reasonable interpretation, however, "the words of the claims must be given their 'plain meaning' unless such meaning is

inconsistent with the specification (MPEP 2111.01.1). “Plain meaning refers to the ordinary and customary meaning given to the term by those of ordinary skill in the art” (MPEP 2111.01III). The ordinary and customary meaning of a power generating wind turbine to a practitioner of power systems would not be a hair dryer or a simple fan. Even a non-practitioner knows the ordinary and customary meaning to be a structure with blades that employs the ambient wind to turn the blades and produce power. Further, a power generating wind turbine circuit element would be known to a practitioner as an electric circuit element related to operation of the power generating wind turbine. This interpretation is consistent with the specification. (Fact 1,2)

One of Ordinary Skill in the Art Would Not Combine the Cited References

In rejecting claims 13-23 under 35 USC 103§(a), the Examiner relies on *Hamerski* in view of *Seabury*. *Hamerski* discloses an all weather gas supply unit for delivering generally inert gas to a sealed storage structure for atmosphere control. *Seabury* is directed to a system and method of producing a beneficiated fuel from a raw low ranked moisture laden fuel. In rejecting Claims 16-19, the Examiner asserts that it would have been obvious to one skilled in the art to combine the teachings of *Hamerski* with the power generating wind turbine circuit element of *Seabury* for the purpose of providing an optimum source of energy in an efficient

drying process. (FOA mailed Jan. 7, 2009, Pg. 2 Par. 2- Pg. 3 Par. 1)

The face page of *Seabury* illustrates a moisture reduction apparatus block 20 that accepts an exhaust gas from a combustion turbine 12 that generates electricity 40 and delivers a beneficiated fuel 26 with moisture removed to a fired steam generator 44. (*Seabury*) The moisture reduction process for the fuel in *Seabury* directs hot exhaust gas from the combustion gas turbine to be run over an organic fuel to remove moisture *Seabury* (Col. 1 lines 28-38). It is known that hot exhaust gases from a combustion gas turbine are extremely hot (1000F) and corrosive. Such temperatures would clearly be damaging to electric circuit elements. Further the corrosive exhaust from the gas turbine if applied to electric circuit elements would be further damage electric contacts and electronic circuits. Such an application would not be considered by one skilled in the art as a teaching to be applied for the prevention of moisture within a switch panel. For a power generating wind turbine, such an application would likely damage “a power generating wind turbine circuit element” and thereby cause a loss or malfunction of the operational parameter associated with the power generating wind turbine. Based on the above, Appellant respectfully submits that the combination of *Seabury* with *Hamerski* as applied to claims 13-22 should be removed. The Examiner acknowledges that without *Seabury*, all elements of the claims are not taught. (Fact 15)

Accordingly the cited references fails to disclose, teach or suggest all the elements of claims 13-22. For at least the foregoing reasons, Appellant respectfully submits that claim 13-22 is patentable over *Hamerski* and requests that the rejection of claim 13 and its dependent claims 14-22 under 35 U.S.C. § 103(a) over *Hamerski* in view of *Seabury* be overturned.

Combination of References Fails To Teach All Elements of Claim 13

If for the sake of argument, the cited references were combinable, Appellant respectfully submits that the combination of references fail to teach all elements of the claim. In particular, Claim 13 recites a “power generating wind turbine switch cabinet”. As identified in Fact 4, *Hamerski* is alleged by the Examiner as disclosing a “power generating wind turbine switch cabinet” in item 9 of FIGs 1, 3. As stated in Facts 5 and 6, *Hamerski* recites an “exothermic gas generator 9”. As stated in Fact 7, *Hamerski* recites the exothermic gas generator 9 delivers a gas for environmental control in an external silo. The exothermic gas generator is not a “power generating wind turbine switch cabinet” or anything like such a switch cabinet for controlling a function of the power generating wind turbine. Further as stated in Fact 8 the Examiner cites *Hamerski* as disclosing a wind turbine 69 of Claim 13. As stated in Facts 9 and 10, *Hamerski* identifies item 69 as a blower (fan) causing air to circulate through shroud 21 and around condenser 18 and combustion chamber 16. Appellant respectfully submits that a fan is not a wind

turbine (Fact 11) in the ordinary sense or more specifically as described in the context of the background of the invention as stated in Facts 1/2 where wind is utilized by a wind turbine to produce power. Still further, in Fact 12, the Examiner cites *Hameski* (Col 4, lines 44-66) as disclosing a drying arrangement adapted to prevent water deposition onto the at least one power generating wind turbine circuit element, the drying arrangement including an air flow device generating an air flow in a region of the at least one power generating wind turbine circuit element. As stated in Fact 13, *Hamerski* Col 4, lines 44-66 recites a water trap and separator but not a drying arrangement including an air flow generating device, an air flow in a region of the at least one power generating wind turbine circuit element to counteract water deposition onto the at least on power generating circuit element. While other sections of *Hamerski* (See Fact 9) may recite blowers, nowhere does *Hamerski* disclose “a drying arrangement adapted to prevent water deposition onto the at least one power generating wind turbine circuit element, the drying arrangement including an air flow device generating an air flow in a region of the at least one power generating wind turbine circuit element”.

Appellant respectfully submits that *Hamerski*, even if combined with *Seabury*, fails to cure the above deficiencies. In Fact 15, Examiner acknowledges *Hamerski* fails to disclose the claimed “power generating wind turbine circuit element”. In Fact 16, the Examiner asserts that *Seabury* discloses “another drying

arrangement” disclosing the claimed power generating wind turbine circuit element on the face page of *Seabury*. As stated in Fact 18 *Seabury* recites a system for and method of producing a beneficiated fuel from a raw low ranked moisture laden fuel. As stated in Fact 19, the face page of *Seabury* illustrates a moisture reduction apparatus block 20 that accepts and exhaust gas from a combustion gas turbine 12 that generates electricity 40 and delivers a beneficiated fuel 26 with moisture removed to a fired steam generator. From Fact 13, a combustion gas turbine is not a power generating wind turbine as recited in claim 13, nor even a wind turbine.

Appellant respectfully asserts that none of the above-described elements of the face page of *Seabury*, nor any other element of *Seabury*, discloses the claimed “power generating wind turbine circuit element” or any electric circuit element for which moisture is being removed.

Accordingly the combination of cited references fails to disclose, teach or suggest all the elements of claim 13. For at least the foregoing reasons, Appellant respectfully submits that claim 13 is patentable over the combination of cited references and requests that the rejection of claim 13 and its dependent claims 14-22 under 35 U.S.C. § 103(a) over *Hamerski* in view of *Seabury* be overturned.

Combination of Cited References Fails To Teach All Elements of Claim 14

In rejecting Claim 14, the Examiner cites *Hamerski* as disclosing the claimed at least one heating device to heat an air in the region of the at least one

power generating wind turbine circuit element. (Fact 25). Heating air in the region of the power generating wind turbine circuit element enhances moisture absorption in the air passing by. (Fact 26) The Examiner does not recite any specific part number of FIG. 3 of *Hamerski* that discloses the structural relationship of “at least one heating device to heat an air in the region of the at least one power generating wind turbine circuit element”. (Fact 27) Heaters 58 and 73 of *Hamerski* heat air to prevent freezing and flow blockage of airflow in an outdoor silo system [FIG. 3; Col. 5, lines 5-8; Col. 5, lines 68-72] but cite no relationship to a power generating wind turbine circuit element. (Fact 28) Further, as previously argued with respect to claim 13, none of the references used by the Examiner (*Hamerski* nor *Seabury*) recite a “power generating wind turbine element.”

Accordingly the combination of cited references fails to disclose, teach or suggest all the elements of claim 14. For at least the foregoing reasons, Appellant respectfully submits that claim 14 is patentable over the combination of cited references and requests that the rejection of claim 14 under 35 U.S.C. § 103(a) over *Hamerski* in view of *Seabury* be overturned.

Combination of Cited References Fails To Teach All Elements of Claim 15

Claim 15 recites “The apparatus of claim 13 or 14, wherein the drying arrangement further comprises: a cooling element to separate water from air flowing by, the cooling element being spaced apart from the at least one power-generating wind

turbine circuit element; and a drain element to drain the water deposition out of the power-generating wind turbine switch cabinet.” In rejecting Claim 15, the Examiner cites *Hamerski* as disclosing cooling and drain elements (col 4 line 62-col. 5 line 4). (Fact 29) The cooling arrangement (ice arrestor) 10 of *Hamerski* cited by the Examiner (Col. 4 line 62-col.5 line 4) is located outside the structure of the exothermic gas generator 9 cited by the Examiner as a power generating wind turbine switch cabinet and therefore is unable to cool the air in the switch cabinet 9 (as referred to by the Examiner) for moisture removal. (Fact 30) However, the arrangement only makes functional sense if the cooling element cools the air within the switch cabinet so the drain element can “drain the water deposition” out of the power generating wind turbine switch cabinet.

Accordingly the combination of cited references fails to disclose, teach or suggest all the elements of claim 15, particularly at least the cooling element being spaced apart from the power generating wind turbine circuit element. For at least the foregoing reasons, Appellant respectfully submits that claim 15 is patentable over the combination of cited references and requests that the rejection of claim 15 under 35 U.S.C. § 103(a) over *Hamerski* in view of Seabury be overturned.

Combination of Cited References Fails To Teach All Elements of Claim 16

Claim 16 recites “The apparatus of claim 15, wherein the air flow device generating an air flow circulating within the power-generating wind turbine switch

cabinet and moving air past the at least one power-generating wind turbine circuit element and the cooling element . ” In rejecting Claim 16, the Examiner cites Col. 5, lines 31-36 of *Hamerski* as reciting “moving air past the cooling element” which is cooling air shroud 21. (Fact 32.) Appellant respectfully submits that the air flow cited above by the Examiner flows from outside the cabinet by blower 69 through shroud 21 (FIG. 3) but does not move air past “the at least one power-generating wind turbine circuit element”. Appellant further submits, as presented in Claim 13 that Seabury does not cure this deficiency.

Accordingly the combination of cited references fails to disclose, teach or suggest all the elements of claim 16, particularly in regard to moving air past the power generating wind turbine circuit element. For at least the foregoing reasons, Appellant respectfully submits that claim 16 is patentable over the combination of cited references and requests that the rejection of claim 16 under 35 U.S.C. § 103(a) over *Hamerski* in view of Seabury be overturned.

One of Ordinary Skill in the Art Would Not Combine the Cited References for Claim 17

In rejecting Claim 17, the Examiner acknowledges that *Hamerski* in view of *Seabury* does not disclose the claimed cooling element to separate water from air flow by, the cooling element being spaced apart from the at least one circuit element, and a drain element to drain the water deposition out of the switch cabinet

and the air flow generating device to circulate air with the switch cabinet and to move air past the at least one circuit element and the cooling element. (Fact 34)

The Examiner asserts that it would have been obvious to one skilled in the art provide the teachings of *Hamerski* in view of *Seabury* with the cooling element of *Roethel* to separate water from air flowing by, the cooling element being spaced apart from the at least one circuit element; and a drain element to drain the water deposition out of the switch cabinet and the air and the air flowing device to circulate air within the switch cabinet and to move air past the at least one circuit element and the cooling element for the purpose of efficient moisture free operation of electrical and mechanical equipment in a switching environment. (Fact 36) *Roethel* is a patent issued July 30, 1929 for a roof ventilator of a closed automobile body (*Roethel*-Title) describing a structure for ventilating the inside of an automobile with a fan while preventing outside rain and snow from entering (*Roethel* Col 1 lines 6-20). (Fact 37).

Appellant respectfully submits that one skilled in the art of power-generating wind turbines would not look to *Roethel* with respect to preventing the deposition of moisture on power-generating wind turbine circuit elements within a switch cabinet. *Roethel* should be disregarded.

Combination of Cited References Fails To Teach All Elements of Claim 17

In rejecting Claim 17, The Examiner asserts that *Roethel* is an air flow

apparatus disclosing a cooling element 28 to separate water from air flowing by, the cooling element being spaced apart from the at least one circuit element and a drain element to drain the water deposition out of the switch cabinet (Page 2 line 15) and the air generating device to circulate air within the switch cabinet and to move air past the at least one circuit element and the cooling element (Page 2 line 15). (Fact 38) Appellant submits that cooling element 28 (FIG. 1, FIG. 6, Page 2, line 53) of *Roethel* cited by the Examiner is a fan that creates the airflow, not a cooling element being spaced apart from the at least one circuit element to condense moisture in the ambient. The fan 28 exhausts moist air in the vehicle to the outside. (Fact 39) (*Roethel*)

Accordingly the combination of cited references fails to disclose, teach or suggest all the elements of claim 17. For at least the foregoing reasons, Appellant respectfully submits that claim 17 is patentable over the combination of cited references and requests that the rejection of claim 17 under 35 U.S.C. § 103(a) over *Hamerski* in view of *Seabury* in view of *Roethel* be overturned.

Combination of Cited References Fails To Teach All Elements of Claim 18

In rejecting Claims 18-20, the Examiner asserts that *Hamerski* in view of *Seabury* discloses the claimed invention except for the claimed Peltier element for which it would have been an obvious design choice to one skilled in the art. (Fact 40) The Examiner fails to recite why the Peltier element would have been an obvious

design choice for one skilled in the art. (Fact 41) Section 2142 of the MPEP provides that “[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious.” Section 2141 also states that rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” MPEP 2141, citing *KSR Int’l v. Teleflex Inc.*, 127 S. CT. 1727, 1741 (2007).

Appellant respectfully submits that the use of Peltier elements was an integrated part of a design incorporating “plate-like flow guidance elements” to make effective use of the cooling and heating capability of the Peltier elements. Examiner does not cite any prior art employing such use of Peltier elements for the present purpose. Without such rationale, Applicant respectfully submits that the rejection of claim 18 under 35 USC 103(a) should fail and claim 18 should be allowed.

Combination of Cited References Fails To Teach All Elements of Claim 19-20

In rejecting Claims 19-20, the Examiner fails to recite any reference disclosing “a plate-like flow guidance element interspersed with the Peltier element such that the at least one power generating wind turbine circuit element is disposed at a side of the flow guidance element to face a warmer part of the Peltier

element.” Further none of the references Hamerski, Seabury or Schloss, alone or in combination teach or suggest “a plate-like flow guidance element” particularly in combination with a Peltier element. Accordingly the combination of cited references fails to disclose, teach or suggest all the elements of claim 19-20. For at least the foregoing reasons, Appellant respectfully submits that claims 19-20 are patentable over the combination of cited references and requests that the rejection of claim 19-20 under 35 U.S.C. § 103(a) over *Hamerski* in view of *Seabury* be overturned.

Combination of Cited References Fails To Teach All Elements of Claims 21- 22

In Fact 46, claim 22 recites the power generating wind turbine circuit element controlling an operational parameter of the wind turbine. From Fact 43, in rejecting Claim 21-22, the Examiner asserts that *Hamerski* in view of *Seabury* discloses the claimed invention except for the claimed humidity control device in which *Streed* discloses (col. Line 3-Col. 4 line 66). Appellant respectfully submits that Examiner has not cited a reference disclosing, teaching or suggesting the power generating wind turbine circuit element controlling an operational parameter of the wind turbine. Examiner cites humidity controls of *Streed*. Neither *Hamerski*, *Seabury* nor *Streed* discloses a power generating wind turbine circuit element, or a wind turbine circuit element controlling operational parameter of the wind turbine as exemplarily disclosed in Fact 1. Accordingly the combination of

cited references fails to disclose, teach or suggest all the elements of claim 22. For at least the foregoing reasons, Appellant respectfully submits that claim 22 is patentable over the combination of cited references and requests that the rejection of claim 22 under 35 U.S.C. § 103(a) over *Hamerski* in view of *Seabury* in view of *Streed* be overturned.

The Cited References Fails To Teach All Elements of Claim 23

Schloss recites an environmentally controlled chamber for cardiovascular conditioning of a subject individual (Fact 47). In rejecting Claims 23-25 and 28, the Examiner asserts that *Schloss* discloses controlling an operational parameter of a wind turbine by at least one power generating wind turbine circuit element coupled to a switch cabinet (Col. 7 line 52 through Col. 8 line 10) (Fact 48). Col. 7 line 52 through Col. 8 line 10 discloses a circuit for a fan that circulates hot air in the chamber to cause the subject to sweat, the sweat being absorbed in the air (Fact 50). Appellant respectfully submits that the fan is not a power generating wind turbine and the fan circuit is not a power generating wind turbine circuit element. If anything the fan circuit is part of a mechanism that creates an air flow

The Examiner further asserts that *Schloss* discloses generating an airflow in the internal space of the power generating wind turbine switch cabinet using an air flow generating device to counteract a deposition of condensation water onto the at least on power generating wind turbine circuit element (Col. 10. lines 1-60). (Fact

51) (Col. 10, lines 1-60) of *Schloss* recite a method of collecting sweat from a subject individual that supplies heated low-humidity air to the chamber with the subject individual and then cools the air to collect the perspiration (Fact 52). Appellant respectfully submits that the act of producing and collecting sweat from an individual subject does not disclose counteracting a deposition of condensation water onto the at least one power generating wind turbine circuit element.

Further the Examiner acknowledges that *Schloss* discloses the claimed invention except for the claimed power generation wind turbine circuit element (Fact 58).

To reject a claim under 35 U.S.C. § 102(b), the prior art must disclose each and every element of the claim. Accordingly *Schloss* fails to teach all the elements of claim 23. For at least the foregoing reasons, Appellant respectfully submits that claim 13 is patentable over *Schloss* and requests that the rejection of claim 23 and its dependent claims 24-28 under 35 U.S.C. § 102(b) over *Schloss* be overturned.

The Cited References Fails To Teach All Elements of Claim 24

The Examiner further asserts that *Schloss* discloses heating an air in a region of the at least one power generating wind turbine circuit element (Col. 8 lines 37-46) (Fact 53). Col. 8 lines 37-46 of *Schloss* recite heating air for the sweat chamber to cause a subject individual to sweat, not heating air in the region of the power generating wind turbine circuit element so any moisture on the circuit is absorbed

(Fact 54). Removing moisture from the circuit prevents malfunction of the circuit which could lead to malfunction of the power generating wind turbine as well as damage to circuit components. Appellant respectfully submits that heating air in a sweat chamber does not disclose heating air in the region of the power generating wind turbine circuit element to this end.

Accordingly *Schloss* fails to teach all the elements of claim 24. For at least the foregoing reason, Appellant respectfully submits that claim 24 is patentable over Schloss and requests that the rejection of claim 24 and its dependent claims 24-28 under 35 U.S.C. § 102(b) over Schloss be overturned.

The Cited Reference Fails To Teach All Elements of Claim 25

The Examiner further asserts that *Schloss* discloses separating water from the airflow at a cooling element, the cooling element spaced apart from the at least one power generating wind turbine circuit element and draining the condensation water out of the switch cabinet by a drain element at (Col. 7, lines 27-40) (Fact 55). Col.7 lines 27-40 of *Schloss* does not recite the cooling element being spaced in relation to any circuit element (Fact 56). Further the Examiner acknowledges that *Schloss* discloses the claimed invention except for the claimed power generation wind turbine circuit element (Fact 46). Appellant submits that *Schloss* cannot disclose a cooling element being element spaced apart from the power generating wind turbine circuit element that is acknowledged as not being disclosed by the

Examiner.

Accordingly *Schloss* fails to teach all the elements of claim 25. For at least the foregoing reason, Appellant respectfully submits that claim 25 is patentable over *Schloss* and requests that the rejection of claim 25 and its dependent claims 27-28 under 35 U.S.C. § 102(b) over *Schloss* be overturned.

One of Ordinary Skill in the Art Would Not Combine the Cited References /The Combination of Cited References Fails To Teach All Elements of Claims 26-28

The Examiner acknowledges that *Schloss* fails to disclose the power generation wind turbine circuit element. (Fact 58) In rejecting Claims 23-25 and 28, the Examiner asserts that it would have been obvious to combine the teachings of Seabury as to the power generating wind turbine circuit element with *Schloss*. For the reasons previously cited with respect to Claim 13, chiefly that Seabury teaches using an excessively hot and corrosive combustion turbine gas for heating that would damage such a power generating wind turbine circuit element or any electric circuit, Appellant submits that the combination of Seabury with *Schloss* is improper and should not be recognized. Without Seabury, *Schloss* fails to disclose, teach or suggest the “power generating wind turbine circuit element”. For at least the foregoing reason, Appellant respectfully submits that claims 26-28 is patentable over *Schloss* and requests that the rejection of claims 26-28 under 35 U.S.C. § 103(a) over *Schloss* be overturned.

X. APPENDIX

A. CLAIMS

The Claims involved in this Appeal are as follows:

1-12 Cancelled

13. (Rejected) An apparatus, comprising:

- a power-generating wind turbine switch cabinet;
- at least one power-generating wind turbine circuit element coupled to the power-generating wind turbine switch cabinet; and
- a drying arrangement adapted to prevent water deposition onto the at least one power-generating wind turbine circuit element, the drying arrangement including an air flow device generating an air flow in a region of the at least one power-generating wind turbine circuit element to counteract the water deposition onto the at least one power-generating wind turbine circuit element.

14. (Rejected) The apparatus of claim 13, wherein the drying arrangement further comprises:

- at least one heating device to heat an air in the region of the at least one power-generating wind turbine circuit element.

15. (Rejected) The apparatus of claim 13 or 14, wherein the drying arrangement further comprises:

a cooling element to separate water from air flowing by, the cooling element being spaced apart from the at least one power-generating wind turbine circuit element; and

a drain element to drain the water deposition out of the power-generating wind turbine switch cabinet.

16. (Rejected) The apparatus of claim 15, wherein the air flow device generating an air flow circulating within the power-generating wind turbine switch cabinet and moving air past the at least one power-generating wind turbine circuit element and the cooling element.

17. (Rejected) The apparatus of claim 15, wherein a Peltier element includes the at least one heating device and the cooling element.

18. (Rejected) The apparatus of claim 16, wherein a Peltier element includes the at least one heating device and the cooling element.

19. (Rejected) The apparatus of claim 17, further comprising:

a plate-like flow guidance element interspersed with the Peltier element, and wherein the at least one power-generating wind turbine circuit element is disposed at a side of the flow guidance element to face a warmer part of the Peltier element.

20. (Rejected) The apparatus of claim 18, further comprising:

a plate-like flow guidance element interspersed with the Peltier element, and wherein the at least one power-generating wind turbine circuit element is disposed at a side of the flow guidance element to face a warmer part of the Peltier element.

21. (Rejected) The apparatus of claim 13, further comprising:

a control device to control the drying arrangement depending on temperature or humidity within or outside the power-generating wind turbine switch cabinet.

22. (Rejected) The apparatus of claim 13, wherein the at least one power-generating wind turbine circuit element controls an operation of the wind turbine.

23. (Rejected) A method comprising:

controlling an operational parameter of a power-generating wind turbine by at least one power-generating wind turbine circuit element coupled to a power-generating wind turbine switch cabinet; and

generating an airflow in the internal space of the power-generating wind turbine switch cabinet using an air flow generating device to counteract a deposition of condensation water onto the at least one power-generating wind turbine circuit element.

24. (Rejected) The method of claim 23, further comprising:

heating an air in a region of the at least one power-generating wind turbine circuit element.

25. (Rejected) The method of claim 23 or 24, further comprising:

separating water from the airflow at a cooling element, the cooling element spaced apart from the at least one power-generating wind turbine circuit element; and

draining the condensation water out of the switch cabinet by a drain element.

26. (Rejected) The method of claim 24, further comprising:

heating the air by the Peltier element, which is also used as a cooling element.

27. (Rejected) The method of claim 25, further comprising:

heating the air by the Peltier element, which is also used as a cooling element.

28. (Rejected) The method of claim 25, further comprising:

generating the airflow, heating the air, and activating the cooling element depending on temperature or humidity within or outside the power-generating wind turbine switch cabinet.

B. CLAIMS SUPPORT AND DRAWING ANALYSIS

Nomenclature Page (P) Multiple Page (PP) Line (L) Multiple Lines (LL)

An apparatus, comprising:

a power-generating wind turbine switch cabinet; **{P1 LL15-20; P2-LL9-11, L21; P3 LL11-12, 20, 25; P4 LL10-14, 28; P5 LL 9, 11, 15; FIGs. 1-2 (1)}.**

at least one power-generating wind turbine circuit element coupled to the power-generating wind turbine switch cabinet; **{P1 LL 15-19; P2 LL 14, 17, 23 ,26; P3 LL 13, 15, 16; P4 LL 12-14, 19, 20, 28; P5 L15; FIGs. 1-2 (20)}.** and

a drying arrangement adapted to prevent water deposition onto the at least one power-generating wind turbine circuit element, the drying arrangement including an air flow device generating an air flow in a region of the at least one power-generating wind turbine circuit element to counteract the water deposition

onto the at least one power-generating wind turbine circuit element. {**P2 LL 22-32; P4 LL 14-20, 22-29; P5 L 9, 11, 15; P6 L6; FIGS. 1-2**}.

14. The apparatus of claim 13, wherein the drying arrangement further comprises:

at least one heating device to heat an air in the region of the at least one power-generating wind turbine circuit element. {**P2 LL 15-19; P 4 LL 15-20; P 5 LL 13-20, 22-24; FIG. 1(32), FIG. 2 (132).**}

15. The apparatus of claim 13 or 14, wherein the drying arrangement further comprises:

a cooling element to separate water from air flowing by, the cooling element being spaced apart from the at least one power-generating wind turbine circuit element; {**P2 LL 21-32; P4 LL19,28; P4 L31-P5 L3; P5 LL 15-20, 26-33; FIG. 1(36), FIG. 2(136)**} and

a drain element to drain the water deposition out of the power-generating wind turbine switch cabinet. {**P2 LL 24, 31-32; P 5 LL 3-6, 18-20, 29-32; FIG. 1(38); FIG. 2(138).**}

16. The apparatus of claim 15, wherein the air flow device generating an air flow circulating within the power-generating wind turbine switch cabinet and moving

air past the at least one power-generating wind turbine circuit element and the cooling element. {P2 LL 13-15, 26-32; P4 14-20, 22-29; P5 LL 8-12, 13-20; FIG. 1,2(30).}

17. The apparatus of claim 15, wherein a Peltier element includes the at least one heating device and the cooling element. {P3 LL 1-6, 20-25; P5 LL 22-32; P6 LL 3-4; FIG. 2(130).}

18. The apparatus of claim 16, wherein a Peltier element includes the at least one heating device and the cooling element. {P3 LL 1-6, 20-25; P5 LL 22-32; P6 LL 3-4; FIG. 2(130).}

19. The apparatus of claim 17, further comprising:

a plate-like flow guidance element interspersed with the Peltier element, and wherein the at least one power-generating wind turbine circuit element is disposed at a side of the flow guidance element to face a warmer part of the Peltier element. {P3 LL 1-6; P4 LL 14-20; P5 LL 24-32; FIG. 1(34); FIG. 2(34), (35).}

20. The apparatus of claim 18, further comprising:

a plate-like flow guidance element interspersed with the Peltier element, and

wherein the at least one power-generating wind turbine circuit element is disposed at a side of the flow guidance element to face a warmer part of the Peltier element.

{P3 LL 1-6; P4 LL 14-20; P5 LL 24-32; FIG. 1(34); FIG. 2(34), (35).}

21. The apparatus of claim 13, further comprising:

a control device to control the drying arrangement depending on temperature or humidity within or outside the power-generating wind turbine switch cabinet.

[P3 LL 7-9; P5 LL 8-13, 31; P6 L 2;]

22. The apparatus of claim 13, wherein the at least one power-generating wind turbine circuit element controls an operation of the wind turbine. **{P1 LL 15-17; P3 LL 13-14; P4 LL 13-14; FIG. 1, 2 (20).}**

23. A method **{P3 L12}**comprising:

controlling an operational parameter of a power-generating wind turbine by at least one power-generating wind turbine circuit element coupled to a power-generating wind turbine switch cabinet; **{P1 LL 15-17; P3 LL 13-14; FIG. 1, 2.}**
and

generating an airflow in the internal space of the power-generating wind turbine switch cabinet using an air flow generating device to counteract a

deposition of condensation water onto the at least one power-generating wind turbine circuit element. {P2 LL 26-32; P3 LL 15-18; P4 LL 13-15; FIG. 1, 2.}

24. The method of claim 23, further comprising:

heating an air in a region of the at least one power-generating wind turbine circuit element. {P2 LL 15-19, 26-32; P3 LL 1-6, 17-18; P4 LL 14-20, 24-29; P 5 LL10-12, 13-17, 26-29.}

25. The method of claim 23 or 24, further comprising:

separating water from the airflow at a cooling element, the cooling element spaced apart from the at least one power-generating wind turbine circuit element; {P2 LL 21-24; P3 LL 18-20,; P4 LL 19-20, 26-29; P5 LL 29-32; FIG. 1, 2.}

and

draining the condensation water out of the switch cabinet by a drain element. {P2 LL 26-32; P3 LL 13-20; P5 LL 3-6, 18-20, 29-34; FIG. 1, 2.}

26. The method of claim 24, further comprising:

heating the air by the Peltier element, which is also used as a cooling element. {P3 LL 1-7, 20-26; P5 LL 22-29; FIG. 1, 2.}

27. The method of claim 25, further comprising:

heating the air by the Peltier element, which is also used as a cooling element. {P3 LL 1-7, 20-26; P5 LL 22-29; FIG. 1, 2.}

28. The method of claim 25, further comprising:

generating the airflow, {P2 LL 26-32; P3 LL 15-18; P4 LL 22-24, P5 LL 8-13; FIG. 1, 2.}

heating the air, {P2 LL 15-19; P3 LL 15-18; P4 LL 14-20; P5 8-12, 29-34; FIG. 1, 2.] and

activating the cooling element depending on temperature or humidity within or outside the power-generating wind turbine switch cabinet. {P3 LL 7-9, 20-25; P5 L9; P5 L29-P6 L6.}

C. MEANS OR STEP PLUS ANALYSIS SECTION

There are no mean or step plus claims.

D. EVIDENCE

There is no evidence submitted herewith.

E. RELATED CASES

1. 111123E-EP Application No. 03750628.4-2315/1546553 (5 Pages)
Summons to attend oral proceedings pursuant to Rule 115(1) EPC



Pg 46

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Reference 11123E-EP	Application No./Patent No. 03750628.4 - 2315 / 1546553
Applicant/Proprietor GENERAL ELECTRIC COMPANY	

Summons to attend oral proceedings pursuant to Rule 115(1) EPC

You are hereby summoned to attend oral proceedings arranged in connection with the above-mentioned European patent.

The matters to be discussed are set out in the communication accompanying this summons (EPO Form 2906).

The oral proceedings, which will be public, will take place before the opposition division

on 30.11.09 at 09.00 hrs in Room 3463
at the EPO, Bayerstr. 34, Pschorr-Höfe, D-80335 München

No changes to the date of the oral proceedings can be made, except on serious grounds (see OJ EPO 1/2009, 68). If you do not appear as summoned, the oral proceedings may continue without you (R. 115(2) EPC).

Your attention is drawn to Rule 4 EPC, regarding the language of the oral proceedings, and to the Special edition No. 3 OJ EPO 2007, 128, concerning the filing of authorisations for company employees and lawyers acting as representatives before the EPO.

The final date for making written submissions and/or amendments (R. 116 EPC) is 30.10.09.

You are requested to report in good time beforehand to the porter in the EPO foyer. Room 3473 and 3474 are available as waiting rooms. Parking is available free of charge in the underground car park. However, this applies only in the case of accessing the car park via the entrance "Zollstrasse".

1st Examiner:
Pinna S

2nd Examiner:
Morrish S

Chairman:
Thomas D

For the Opposition Division



Annexes:
Confirmation of receipt (Form 2936)
Rule 4 EPC (EPC Form 2043)
Communication (EPO Form 2906)

In view of the argumentation submitted by the parties and taking into consideration the set of claims filed by the patent proprietor on 15.10.2007 the preliminary opinion of the opposition division is as follows.

1. Reference is made to the following documents; the numbering will be adhered to in the rest of the procedure:

From opponent 1 (o1):

D1: Fachbuch 'Schaltschrank- und Gehäuse-Klimatisierung in der Praxis mit EMVU, Teil II, Gottfried Klingberg, 1996,, ISBN 3-923270-07-0, Seiten 103 bis 250
D2: DE20000715U1
D3: Auftragsbestätigung vom 22. Januar 2001, AuftragsNr: CL0-36-00U
D4: Auszug aus der Stückliste zur KommissionsNr: CL3-36-00U, Seiten 1 bis 4
D5: Zeichnung des Schaltschranks CLO-36-00U
D6: Inbetriebnahmeprotokoll der CL3-36-00U
D7: Auftragsbestätigung vom 10. April 2001, AuftragsNr: CG0-13-01U
D8: Rechnung zur AuftragsNr CG1-13-01U
D9: Auszug aus Stückliste zur KommissionsNr CG3-13-01U, Seiten 1 bis 5
D10: Zeichnung Innenaufbau der CW1500ZE vom 10.08.2000

From opponent 2 (o2):

E1: US patent no. 4,586,342 (Nissan Electric), published 6 May 1986
E2: International patent application no. WO-A 01/88441, (Raytheon), published 22 November 2001
E3: US patent no. 4,279,292, (USA), published 21 July 1981
E4: US patent no. 5,504,924 (Hitachi), published 2 April 1996
E5: US patent no. 5,579,217 (Kenetech Windpower), published 26 November 1996
E6: "GMP's Searsburg Wind Power Facility Nears Completion", Wind Power News, Volume 3, Issue 1, published March 1997
E7: "Middelgrunden, the project", A newsletter for customers and business associates of BONUS Energy A/S, front page and page 36, published 1 July 2001

From opponent 3 (o3):

E1: DE19641552C1

E2: DE20000715U1
E3: DE4228521A1
E4: DE 101 39556A1
E5: WO 02/086313 AI
E6: Übergabeprotokoll
E7.1 bis E7.9: Stromlaufplan einer Windenergieanlage vom Typ Nordex N43 hcv
E8: Bedienungsanleitung Windenergieanlage Nordex N43 hcv
E9: Foto von einem geöffneten Schaltschrank
E10: Auszüge aus dem Fachbuch „Schaltschrank-Klimatisierung: Grundlagen, Komponenten, Anwendungen“ von Heinrich Styppa
E11: Auszüge aus dem Fachbuch „Schaltschrank- und Gehäuse-Klimatisierung“ von Gottfried Klingberg
E12: Internet-Recherche

From patent proprietor (PI):

P1: "Vertragsgestaltung"

2. Public prior use(s).

- 2.1 The public prior uses submitted by opponent 1 (documents O1.D3-O1.D5 and O1.D6-O1.D10 filed by opponent 1) appear not to be sufficiently substantiated. In particular, the last pages of O1.D3 and O1.D7 make reference to a framework contract ("Rahmenvertrag"). The corresponding framework contract has, however, not been provided. The opposition division preliminarily shares the view of the patent proprietor that normally a framework contract includes a non-disclosure agreement (also see at this regard page 7 of the document "Vertragsgestaltung", later called P1, filed by the patent proprietor).
- 2.2 The public prior use submitted by opponent 3 (documents O3.E3-O3.E9 filed by opponent 3) appear not to be sufficiently substantiated. In particular, O3.E6 has an handwritten note stating that "this agreement is not considered at any case as a take over certificate".
In view of this the opposition division preliminarily shares the view of the patent proprietor that it is not possible to state that the wind park lots in question were made available to the public before the priority date of the attacked patent.

P₅ 49

- 2.3 Regarding the sufficiency of substantiation of a public prior use reference is made to the guidelines D-V 3.1.2 and 3.1.3 as well as to T93/89 and T194/86. Since all evidence in support of the public prior use lies within the power and knowledge of the opponent 1 and opponent 3 they had to prove their cases up to the hilt (T472/92) within the opposition period.

In that respect, the date, the object and the circumstances of the alleged prior use have to be submitted during the opposition time limit in order to make the prior use admitted at all in the opposition procedure.

3. The feature "for controlling at least one operational parameter of the wind turbine" now added in claim 1 has a limiting effect. However such a limiting effect is extremely reduced due to the broad interpretation that can be given to each of the wordings:

"for controlling"

"at least one"

"operational parameter".

4. Point 2 here above notwithstanding the opposition division is of the provisional opinion that the subject matter of claim 1 as filed with letter dated 15.10.2007 is not new in view of the document O2.E6 filed by opponent 2.
O2.E6 discloses

A wind turbine switch cabinet with at least one circuit element (page 6 col. 3 "electronic components") *for controlling* at least one operational parameter of the wind turbine accommodated in said switch cabinet and a drying arrangement ("heater") for preventing a water deposition onto the at least one circuit element, wherein the drying arrangement comprises a device (heater) for generating an air flow in a region of the at least one circuit element.

Note 1: the heater heats up the air within the switch cabinet. As a consequence convection motion must take place (even at a very low intensity), within the cabinet, thus also in a region of the at least one circuit element (see at this regard O1.D1 page 217, last paragraph).

Note 2: the "region of the at least one circuit element" is not further defined in claim 1. Thus any region of the cabinet (even the whole cabinet) containing somewhere a circuit element falls within the scope of the claim.

5. Furthermore the opposition division is of the provisional opinion that the subject matter of claim 1 as filed with letter dated 15.10.2007 does not involve an inventive step for the following reasons.
In case the heating means of O2.E6 would not be considered as being "a device for generating an air flow in a region of the at least one circuit element" the interpretation of O2.E6 would be:

A wind turbine switch cabinet with at least one circuit element (page 6 col. 3 "electronic components") *for controlling* at least one operational parameter of the wind turbine accommodated in said switch cabinet and a drying arrangement ("heater") for preventing a water deposition onto the at least one circuit element.

The subject-matter of claim 1 therefore differs from this known wind turbine switch cabinet in that:
the drying arrangement comprises a device for generating an air flow in a region of the at least one circuit element.

The problem to be solved by the present invention may therefore be regarded as to move the air dried by the drying arrangement to a region wherein the dried air is needed.

The solution proposed in claim 1 of the present application cannot be considered to involve an inventive step (Articles 52(1) and 56 EPC), for the following reasons: Equipping a drying arrangement with of a device for generating an air flow appears to be a known measure to solve the problem posed, see O1.D1 pages 217-219 wherein a ventilator is used in combination with a heater to warm up electric components. The problem of condensation is addressed at page 219, first line.

It would be therefore obvious for the skilled person, in order to solve the problem posed, to combine documents O2.E6 and O1.D1 thus arriving at the subject matter of claim 1.

6. Furthermore the subject matter of claim 1 does not appear to involve an inventive step even in view of a combination of O2.E6 and the common general knowledge for the following reasons.

The use in a drying arrangement of a device for generating an air flow in a region of one circuit element appears to belong to the common general knowledge in the field of electronics.

Further, it is well known that condensation is a general problem for switching cabinets (cf. O1.D1). If faced with the further problem of saving energy and considering that condensation does not need to be avoided in the whole cabinet, it is manifestly obvious that the skilled person would concentrate its efforts to the critical element. No surprising effect or advantage can be achieved therewith. Hence the subject matter of claim 1 lacks an inventive step.

7. Other combinations of the prior art documents submitted by O1-O3 appear to show that the subject matter of both independent claims as well as the dependent claims thereon lacks an inventive step.
8. The wording "wind turbine switch cabinet" is preliminarily considered clear.
9. In view of the nature of the present case, it appears possible to come to a decision without considering the alleged prior uses. The latter appear to lack a full substantiation which apparently cannot be remedied by the witnesses.

See at this regard the two following decisions of the board of appeal:
T241/99: a witness cannot supplement during OP information which should have been filed during the opposition period.

T1156/05: the purpose of hearing of a witness is not to investigate facts relating to a public prior use.

It is merely to confirm what has been submitted previously in writing.

Hence it is neither considered necessary nor useful to hear the witnesses.